398.

SUPREME COURT OF THE UNITED STATES.

No. 195.

PETER HOGG AND CORNELIUS H. DELAMATER, PLAINTIFFS IN ERROR,

vs.

JOHN B. EMERSON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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J. & G. S. Gideon, printers.

Supreme Court of the United States.

PETER HOGG and Cornelius H. Delamater,
plaintiffs in error,
vs.
JOHN B. EMERSON.

Mr. Sargent, of counsel for plaintiffs in error, suggests a diminution of the record in the cause above entitled, removed to this court from the circuit court of the United States for the southern district of New York, in the 2d circuit, and therein entitled John B. Emerson vs. Peter Hogg and Cornelius H. Delamater, inasmuch as the record thence transmitted on a writ of error from this court does not contain a transcript of the judgment in said cause rendered, and moves this honorable court that a certiorari may issue to the justices of the said court, commanding them to certify immediately to this court so much of the said record as is herein suggested to be omitted.

JOHN O. SARGENT,
Of counsel for plaintiffs in error.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the circuit court of the United States for the southern district of New York, in the second circuit, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between John B. Emerson, plaintiff, and Peter Hogg and Cornelius H. Delamater, defendants, a manifest error hath happened, to the great damage of the said Peter Hogg and Cornelius H. Delamater, as is said, and as appears by their complaint. We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the sixth day of December inst., that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first day of December, in the year of

our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second.

ALEX'R GARDINER,
Clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit.

The answer of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, in the within writ mentioned.

The record and proceedings whereof mention is within made, together with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this sixth day of December, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-second.

ALEX'R GARDINER,
Clerk of the U. S. circuit court for the southern district of New York.

Citation in error.

By the honorable Samuel Nelson, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to John B. Emerson.

Whereas, in the case of "John B. Emerson vs. Peter Hogg and Cornelius H. Delamater," upon the docket of this court, there lately issued out of the Supreme Court of the United States a writ of error directed to the judge of the circuit court of the United States for the southern district of New York, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between you, John B. Emerson, plaintiff, and Peter Hogg and Cornelius H. Delamater, defendants, a manifest error hath happened, to the great damage of the said Peter Hogg and Cornelius H. Delamater.

And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated term of the Supreme Court of the United States, at the city of Washington, on the sixth day of December inst. You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the said sixth day of December inst., to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the first day of December, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States the seventy-first.

S. NELSON.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James O. Sargent, of the city of New York, being duly sworn, deposes and says, that on the 28th day of December ult., he served a copy of the within citation on H. Morton, esq., attorney for John B. Emerson, by leaving the same with a person in and having charge of the office of said attorney.

JAMES O. SARGENT.

Sworn to, January 3d, 1847, before me.

GEO. W. MORTON,
U. S. Com'r.

U. S. OF AMERICA,
District of Columbia, ss:

John O. Sargent, of the city of New York, being duly sworn, doth depose and say, that on the 30th day of December instant, he served the within citation on John B. Emerson therein named, by showing him the original, and leaving with him a true copy of the same.

JOHN O. SARGENT.

Sworn to before me, this 30th day of December, 1847.

S. NELSON.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Alexander Gardiner, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourth day of [SEAL.] January, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the said United States the seventy-second.

ALEX. GARDINER, *Clerk.*

Circuit court of the United States, for the southern district of New York, in the second circuit.

PETER HOGG and CORNELIUS H. DELAMATER ads. JOHN B. EMERSON.

Be it remembered, that in the term of April, in the year of our Lord one thousand eight hundred and forty-four, came John B. Emerson, by Peter Clark, his attorney, into the circuit court of the United States for the second judicial circuit and southern district of New York, before the justices thereof, and impleaded Peter Hogg and Cornelius H. Delamater in a certain plea of trespass on the case, on which the said John B. Emerson declared against them, in the words following:

John B. Emerson, a citizen of the State of New York, by Peter Clark, his attorney, complains of Peter Hogg and Cornelius Delamater, citizens of the same State, defendants, in custody, &c., of a plea of trespass on the case.

For that, whereas, the said plaintiff was the original inventor of a certain new and useful improvement, in the letters patent hereinafter mentioned and fully described, the same being a certain improvement in the steam engine, and in the mode of propelling therewith either vessels on the water or carriages on the land, which was not known or used before his said invention, and which was not, at the time of his application for a patent, as hereinafter mentioned, in public use with his consent or allowance. And the said plaintiff being so as aforesaid the inventor thereof, and being also a citizen of the United States, on the eighth day of March, one thousand eight hundred and thirty-four, upon due application therefor, did obtain certain letters patent therefor, in due form of law, under the seal of the United States, signed by Andrew Jackson, then President, and countersigned by Louis McLane, then Secretary of State, bearing date the day and year aforesaid, whereby there was secured to him, the said plaintiff, his heirs, executors, administrators, or assigns, for the term of fourteen years from and after the date of the said patent, the exclusive right and liberty of making, using, and vending to others to be used, the said improvement, as by the said letters patent in court to be produced will fully appear. And the said plaintiff further says, that the said defendants, well knowing the said several premises, but contriving, and wrongfully, and injuriously intending to injure the plaintiff, and deprive him of the profits, benefits, and advantages which he might, and otherwise would, have derived and acquired from the making, using, and vending of the said invention or improvement, after the making and issuing of the said letters patent, and within the term of fourteen years in said letters patent mentioned, to wit, on the first day of January, eighteen hundred and forty, and on divers other days and times between that time and the commencement of this suit, at the city of New York, and within the southern district of New York, wrongfully and unjustly, without the leave or license, and against the will of the plaintiff, made and sold divers, to wit, ten machines for propelling boats in imitation of the said invention and improvement, or a part of the said invention or improvement, to the benefit, use, and enjoyment whereof the said plaintiff was and is entitled as aforesaid, in violation and infringement of the said letters patent, and of the exclusive right and privilege to which the plaintiff was and is entitled as aforesaid, and contrary to the form of the statutes of the United States in such case made and provided.

And the said plaintiff further says, that the said defendant, well knowing the said several premises, but further contriving and intending as aforesaid, after the obtaining of the said letters patent by the said plaintiff as aforesaid, and within the said term of fourteen years, to wit, on the said first day of January, eighteen hundred and forty, and at divers other times between that day and the commencement of this suit, within the southern district of New York aforesaid, wrongfully and unjustly, with-

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James O. Sargent, of the city of New York, being duly sworn, deposes and says, that on the 28th day of December ult., he served a copy of the within citation on H. Morton, esq., attorney for John B. Emerson, by leaving the same with a person in and having charge of the office of said attorney.

JAMES O. SARGENT.

Sworn to, January 3d, 1847, before me.

GEO. W. MORTON,
U. S. Com'r.

U. S. OF AMERICA,
District of Columbia, ss:

John O. Sargent, of the city of New York, being duly sworn, doth depose and say, that on the 30th day of December instant, he served the within citation on John B. Emerson therein named, by showing him the original, and leaving with him a true copy of the same.

JOHN O. SARGENT.

Sworn to before me, this 30th day of December, 1847.

S. NELSON.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Alexander Gardiner, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourth day of [SEAL.] January, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the said United States the seventy-second.

ALEX. GARDINER, *Clerk.*

Circuit court of the United States, for the southern district of New York, in the second circuit.

PETER HOGG and CORNELIUS H. DELAMATER } ads.
JOHN B. EMERSON. }

Be it remembered, that in the term of April, in the year of our Lord one thousand eight hundred and forty-four, came John B. Emerson, by Peter Clark, his attorney, into the circuit court of the United States for the second judicial circuit and southern district of New York, before the justices thereof, and impleaded Peter Hogg and Cornelius H. Delamater in a certain plea of trespass on the case, on which the said John B. Emerson declared against them, in the words following:

John B. Emerson, a citizen of the State of New York, by Peter Clark, his attorney, complains of Peter Hogg and Cornelius Delamater, citizens of the same State, defendants, in custody, &c., of a plea of trespass on the case.

For that, whereas, the said plaintiff was the original inventor of a certain new and useful improvement, in the letters patent hereinafter mentioned and fully described, the same being a certain improvement in the steam engine, and in the mode of propelling therewith either vessels on the water or carriages on the land, which was not known or used before his said invention, and which was not, at the time of his application for a patent, as hereinafter mentioned, in public use with his consent or allowance. And the said plaintiff being so as aforesaid the inventor thereof, and being also a citizen of the United States, on the eighth day of March, one thousand eight hundred and thirty-four, upon due application therefor, did obtain certain letters patent therefor, in due form of law, under the seal of the United States, signed by Andrew Jackson, then President, and countersigned by Louis McLane, then Secretary of State, bearing date the day and year aforesaid, whereby there was secured to him, the said plaintiff, his heirs, executors, administrators, or assigns, for the term of fourteen years from and after the date of the said patent, the exclusive right and liberty of making, using, and vending to others to be used, the said improvement, as by the said letters patent in court to be produced will fully appear. And the said plaintiff further says, that the said defendants, well knowing the said several premises, but contriving, and wrongfully, and injuriously intending to injure the plaintiff, and deprive him of the profits, benefits, and advantages which he might, and otherwise would, have derived and acquired from the making, using, and vending of the said invention or improvement, after the making and issuing of the said letters patent, and within the term of fourteen years in said letters patent mentioned, to wit, on the first day of January, eighteen hundred and forty, and on divers other days and times between that time and the commencement of this suit, at the city of New York, and within the southern district of New York, wrongfully and unjustly, without the leave or license, and against the will of the plaintiff, made and sold divers, to wit, ten machines for propelling boats in imitation of the said invention and improvement, or a part of the said invention or improvement, to the benefit, use, and enjoyment whereof the said plaintiff was and is entitled as aforesaid, in violation and infringement of the said letters patent, and of the exclusive right and privilege to which the plaintiff was and is entitled as aforesaid, and contrary to the form of the statutes of the United States in such case made and provided.

And the said plaintiff further says, that the said defendant, well knowing the said several premises, but further contriving and intending as aforesaid, after the obtaining of the said letters patent by the said plaintiff as aforesaid, and within the said term of fourteen years, to wit, on the said first day of January, eighteen hundred and forty, and at divers other times between that day and the commencement of this suit, within the southern district of New York aforesaid, wrongfully and unjustly, with-

out the leave or license, and against the will of the plaintiff, did make and sell, to wit, ten improved machines for propelling boats or vessels upon the water, constructed in a similar form and acting upon the same principle as the said machine or improvement, to the benefit, use, and enjoyment whereof the said plaintiff was and is entitled by his said letters patent, as aforesaid, in violation and infringement of the exclusive right so secured to the said plaintiff by the said letters patent as aforesaid, and contrary to the form of the statute in such case made and provided.

And the said plaintiff further says, that the said defendant, well knowing the said several premises, but contriving and intending as aforesaid, after the obtaining of the said letters patent by the said plaintiff as aforesaid, and within the said term of fourteen years, to wit, on the said first day of January, eighteen hundred and forty, and at divers other times between that day and the commencement of this suit, in the southern district of New York aforesaid, wrongfully and unjustly, and without the consent or allowance, and against the will of the plaintiff, did imitate in part and make a certain addition to the said invention or improvement to the benefit, use, and enjoyment whereof the plaintiff was and is entitled as aforesaid, in breach of the said letters patent, and in violation and infringement of the exclusive right and privilege so secured to the said plaintiff as aforesaid, and contrary to the form of the statute in such case made and provided.

By means of the committing of which said several grievances by the said defendants as aforesaid, the said plaintiff is greatly injured, and has lost and been deprived of divers great gains and profits which he might and otherwise would have derived from the said invention and improvement in the said letters patent described and set forth, and in respect whereof he was and is entitled to such privilege as aforesaid, and was and is otherwise damnified to the damage of the said plaintiff of ten thousand dollars, and therefore, &c.

To this declaration the said defendants, by their attorney, F. A. Hanford, pleaded the general issue, and filed and duly served the said plaintiff with a copy of the special matters of defence to said action, pursuant to the statute in such case made and provided. And thereupon issue was joined between the said plaintiff and the said defendants.

And afterwards, to wit, at a circuit court held at the City Hall, in the city of New York, in and for said circuit, and southern district of New York, [on the] eighth day of May, in the April term of said court, in the year of our Lord one thousand eight hundred and forty-seven, the aforesaid issue, so joined between the parties as aforesaid, came to be tried by a jury of the county of New York, for that purpose duly empannelled and sworn.

And at said time came there as well the said plaintiff as the said defendants, and upon the trial of that issue the counsel for the said plaintiff, to maintain the said issue on his part, gave in evidence the original letters patent of the plaintiff upon which his aforesaid action was grounded, dated the 8th day of March, 1834, and recorded anew on the

5th day of March, 1841, with the schedule thereunto annexed; which letters patent and schedule are in the words and figures following:

The United States of America, to all to whom these letters patent shall come:

Whereas John B. Emerson, a citizen of the United States, hath alleged, that he has invented a new and useful improvement in the steam engine, which improvement he states has not been known or used before his application; hath made oath that he doth verily believe that he is the true inventor or discoverer of the said improvement; hath paid into the Treasury of the United States the sum of thirty dollars, delivered a receipt for the same, and presented a petition to the Secretary of State, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent may be granted for that purpose. These are therefore to grant, according to law, to the said John B. Emerson, his heirs, administrators, or assigns, for the term of fourteen years from the eighth day of March, one thousand eight hundred and thirty-four, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said John B. Emerson himself, in the schedule hereto annexed, and is made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed. Given under my hand, at the city of Washington, this eighth [L. S.] day of March, in the year of our Lord one thousand eight hundred and thirty-four, and of the independence of the United States of America the fifty-eighth.

ANDREW JACKSON.

By the President:

LOUIS McLANE,
Secretary of State.

CITY OF WASHINGTON, *to wit:*

I do hereby certify, that the following letters patent were delivered to me on the eighth day of March, in the year of our Lord one thousand eight hundred and thirty-four, to be examined; that I have examined the same, and find them conformable to law; and I do hereby return the same to the Secretary of State, within fifteen days from the date aforesaid, to wit, on this eighth day of March, in the year aforesaid.

B. F. BUTLER,
Attorney General of the United States.

The schedule referred to in these letters patent, and making part of the same, containing a description in the words of the said John Brown Emerson himself, of his improvement in the steam engine:

To all whom it may concern:

Be it known, that I, John Brown Emerson, of the city of New York,

have invented certain improvements in the steam engine, and in the mode of propelling therewith either vessels on the water or carriages on the land, and that the following is a full and exact description thereof.

One object of my improvement is to substitute for the crank motion a mode of converting the reciprocating motion of a piston into a continued rotary motion, by a new combination of machinery for that purpose.

This mode is applicable to an engine either with one or with two cylinders, and is carried into effect as follows: Alongside of the cylinder I place a shaft, the lower end of which may revolve in a step on the platform or foundation upon which the cylinder stands; in which case it must be somewhat longer than twice the length of the cylinder, as it must extend above it to a height somewhat greater than the length of the stroke of the piston. Sometimes, however, this shaft may have its lower gudgeon only a small distance below the upper end of the cylinders, whence it must extend above it as before. Its upper gudgeon must of course be sustained by a suitable frame. This shaft is to stand parallel to the piston rod from which it is to receive its revolving motion. Upon the upper end of the shaft, above the top of the cylinder, there is to be placed a solid cylinder of wood, or of any other convenient substance, of such diameter as shall cause its periphery to come nearly into contact with the piston rod for its whole length, when the piston is raised. The solid cylinder above described is to be made to revolve in the following manner. I make a groove in it, which commences near its lower end, and passing spirally extends half way round it by the time it reaches nearly to the upper end, or to a distance vertically equal to the stroke of the engine; from that point it passes down around the opposite half, and returns into itself at the point of beginning. Upon the upper end of the piston against its side, I place a friction roller, which is to work in the groove in the solid cylinder; the piston rod rising between parallel guide pieces, by which it is kept in its proper place, and its tendency to turn round by the action of the roller in the groove is checked. When the piston is down, this friction roller will stand in the V formed junction of the grooves on the opposite sides, and as it is raised, it will in its passage to the upper junction give half a revolution to the solid cylinder, and in descending will complete the revolution by the action of the friction roller on the other portion of the groove.

When two cylinders are used, they are to be placed parallel to each other, and at such a distance apart that the pistons of each may, in like manner, act upon the solid cylinder; the piston of one being up when the other is down. The boiler, the steam pipe, the valves for the admission and discharge of steam, and other appendages, may be similar to some of those already in use. From the revolving shaft, already described, a rotary motion may be communicated to paddle wheels, steam carriages, or other objects. As it is my intention, in general, to place my cylinders and revolving shaft vertically, I communicate motion to the horizontal shaft of a paddle wheel by means of bevel geared

wheels near the lower end, or at any convenient part of the shaft; and by similar gearing carriages may be propelled upon rail or ordinary roads.

When used for steamboats I employ an improved spiral paddle wheel, differing essentially from those which have heretofore been essayed. This spiral I make by taking a piece of metal of such length as I intend the spiral propeller to be, and of a suitable width, say, for example, eighteen inches; this I bend along the centre so as to form two sides, say of nine inches in width, standing at right angles, or nearly so, to each other, and give to it, longitudinally, the spiral curvature which I wish. Of these pieces I prepare two or three, or more, and fix them on to the outer end of the paddle shaft, by means of arms of a suitable length, say of two feet, more or less, in such a position that the trough-form given to them longitudinally shall be effective in acting upon the water. It must be entirely under water, and operate in the direction of the boat's way; instead of metal, the spiral propeller may be formed of wood, and worked into the proper form—the shape, and not the material thereof, being the only point of importance.

Where a capstan is required, as on board of a steamboat, I allow the upper end of the vertical shaft before described to pass through the deck of the vessel, and attach the capstan thereto, so that it may be made to revolve by the action of the shaft, using such ray wheels and falls to connect the shaft and the capstan, as will allow of their being conveniently engaged and disengaged.

What I claim as my invention, and for which I ask a patent, is the substituting, for the crank in the reciprocating engine, a grooved cylinder, operating in the manner herein before described, by means of its connection with the piston rod, together with all the variations of which this principle is susceptible; as, for example, a bar of metal may be bent in the form of a groove and attached to the revolving shaft, and friction wheels on the piston rod may embrace this on each side, producing an effect similar to that produced by the groove. I also claim the spiral propelling wheel, contracted and operating in the manner in which I have set forth; and likewise the application of the revolving vertical shaft to the turning of a capstan on the deck of a vessel. Not intending, in either of these parts, to confine myself to precise forms or dimensions, but to vary them in such manner as experience or convenience may dictate, whilst the principle of action remains unchanged, and similar results are produced by similar means.

JOHN BROWN EMERSON.

Witnesses: M. E. JONES,
JOS. ANDREWS.

Whereupon the counsel for the said defendants did insist before the said circuit court, on behalf of the said defendants, that the said letters patent, so produced and given in evidence on the part of the said plaintiff as aforesaid, were wholly insufficient as the basis of his aforesaid action and claim upon the said defendants; and the said counsel did then and there pray the said court to instruct the said jury that the aforesaid

patent, thus produced in evidence by the said plaintiff, was void, for the reasons following:

1. That the claim of the plaintiff, as set forth in his specification annexed to his letters patent, embraces the entire spiral paddle wheel; the claim is, therefore, too broad upon the face of it, and the letters patent are void upon this ground, and the defendants are entitled to a verdict.

2. That the patent is void upon its face; for this, that purporting to be a patent for an improvement, and specifying that the invention is of "an improved spiral paddle wheel, differing essentially from any which have heretofore been essayed," without pointing out in what the difference consists, or in any manner whatever indicating the improvement, by distinguishing it from the previously essayed spiral paddle wheels, it is wanting in an essential prerequisite to the validity of letters patent for an improvement.

3. That the patent is void upon its face; for this, that it embraces several distinct and separate inventions, as improvements in several distinct and independent machines susceptible of independent operation, not necessarily connected with each other in producing the result arrived at in the invention, and the subject-matter of separate and independent inventions.

4. It appears in evidence that the drawing and model of the paddle wheel of plaintiff, filed and deposited originally in the Patent Office, had been lost by the destruction of that office in December, 1836, and that in restoring the record of the patent, under the act of March, 1837, the plaintiff sent from New Orleans to the office a new drawing, to be filed on the 5th May, 1841, together with a court copy of the letters patent which were deposited in the office. The drawing was not sworn to by the plaintiff, but remained in the office till January, 1844, when it was delivered to an agent of the plaintiff and sent to New Orleans, and sworn to by him, and filed in the Department on the 12th February, 1844. On an examination subsequently by the plaintiff, it was discovered that this drawing was imperfectly made, and thereupon a second drawing was procured by him, which was claimed and offered to prove it to be an accurate one, was sworn to, and filed on the 27th March, 1844, an authenticated copy of which was offered in evidence on the trial by the plaintiff; which was objected to by the counsel for the defendants, but the objection was overruled and the evidence admitted, to which an exception was taken.

5. That if from the evidence the jury are satisfied that no propelling wheels were made by the defendants between the 27th of March, 1844, the date of the alleged completion of the record of the plaintiff's patent, under the act of March 3d, 1837, and the commencement of this suit in April following, that, upon this ground, the defendants are entitled to a verdict.

The court charged, in respect to the instructions prayed for, that "the claim of the plaintiff was for an improvement on the spiral paddle-wheel or propeller; that, by a new arrangement of the parts of the

wheel, he had been enabled to effect a new and improved application and use of the same in the propulsion of vessels; that the ground upon which the claim is grounded was this: It is the getting rid of nearly all the resisting surface of the wheels of Stevens, Smith, and others, by placing the spiral paddles or propelling surfaces on the ends of arms, instead of carrying the paddles themselves in a continued surface to the hub or shaft. It is claimed that a great portion of the old blade not only did not aid in the propulsion, but actually impaired its efficiency, and also that the improved wheel is made stronger. It was made a question on the former trial whether the plaintiff did not claim, or intend to claim, the entire wheel. But we understand it to be for an improvement upon the spiral paddle-wheel, claimed to be new and useful in the arrangement of its parts, and more effective, by fixing the spiral paddles upon the extremity of arms at a distance from the shaft."

The court further instructed the jury that "the description of the invention was sufficient, and that the objection, that the parts embraced several distinct discoveries, was untenable."

The court further charged, "that the damages were not necessarily confined to the making of the wheels between March, 1844, when the drawings were restored to the Patent office, and the bringing of the suit. Such a limitation assumes that there can be no infringement of the patent, after the destruction of the records, in 1836, until they are restored to the Patent office, and that, during the intermediate time, the rights of patentees would be violated with impunity." We do not assent to this view.

In the first place, the act of Congress providing for the restoration was not passed till 3d March, 1837; and, in the second place, in addition to this, a considerable time must necessarily elapse before the act would be generally known, and then a still further period before copies of the drawings and models could be procured. Patentees are not responsible for the fire, nor did it work a forfeiture of their rights.

The ground for the restriction claimed is, that the community have no means of ascertaining, but by a resort to the records of the Patent office, whether the construction of a particular machine or instrument would be a violation of the rights of others, and the infringement might be innocently committed.

But, if the embarrassment happened without the fault of the patentee, he is not responsible for it; nor is the reason applicable to the case of a patent that has been published, and the invention known to the public. The specification in this case had been published. It is true, if it did not sufficiently describe the improvement without the aid of the drawing, this fact would not help the plaintiff. Unreasonable delay and neglect in restoring the records, and in the meantime a defendant had innocently made the patented article, a fair ground would be laid for a mitigation of the rule of damages, if not for the withholding them altogether; and the court left the question of fact as to reasonable diligence of the patentee or not in this respect, and also all questions of fact involved in the points of the case for the defendants, to the jury.

The counsel for the defendants excepted to each and every part of the charge of the court, so far as said charge did not adopt the prayer insisted on by the defendants as aforesaid.

And the said court, under the charge, and with the direction as aforesaid, left the aforesaid issue, and the evidence, so given on the trial, to the jury; and the jury aforesaid did then and there give their verdict for the said plaintiff, and for fifteen hundred dollars damages; and because none of the said exceptions so offered and made to the decisions and opinion of the said court as to the construction as aforesaid of the plaintiff's letters patent, and the claim and description contained therein, and as to the admissibility of the testimony aforesaid at said trial, and the instructions and charges given by the said court to the jury, do appear upon the record of the said trial, therefore on the prayer of the said defendants, by their counsel, the said circuit judge, who presided at the trial of said cause, hath to this bill of exceptions put his seal, according to the statute in such case made and provided, this eighth day of May, in the year of our Lord one thousand eight hundred and forty-seven.

S. NELSON. [L. S.]

(Endorsed.)—Writ of error allowed, under 17th section of act of 1836.

Filed Dec. 28, 1847.

Signed, S. NELSON.

Filed 6 Jan., 1848.

SUPREME COURT OF THE UNITED STATES.

No. 195.

HOGG AND AL.

vs.

EMERSON.

Writ of certiorari and return.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the circuit court of the United States, for the southern district of New York, greeting: [L. S.]

Whereas, in a certain suit in the said circuit court, between John B. Emerson, plaintiff, and Peter Hogg and Cornelius H. Dilamater, defendants, which suit was removed to the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit, "that the record does not contain a transcript of the judgment in said cause rendered."

You, therefore, are hereby commanded, that, searching the records and proceedings in said cause, you forthwith certify what omissions you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Roger B. Taney, chief justice of said Supreme court, the first Monday of December, in the year of our Lord eighteen hundred and forty-seven.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

The answer of the judges of the circuit court of the United States for the southern district of New York, in the within writ mentioned. [L. S.]

The omissions in the records and proceedings whereof mention is within made, are hereby respectfully certified to the justices of the Supreme Court of the United States within mentioned, annexed to this writ, as within it is commanded.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-second.

ALEX'R GARDINER,
Clerk of the U. S. ct. court for the southern district of New York.

J. & G. S. Gideon, prints.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Alexander Gardiner, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eighteenth day [L. S.] of January, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the said United States the seventy-second.

ALEX'R GARDINER, *Cl'k.*

Pleas in the circuit court of the United States, held at the City Hall of the city of New York, within and for the southern district of New York, in the second circuit, before the judges of the said court, of the last Monday of November, in the year of our Lord one thousand eight hundred and forty-four.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John B. Emerson, plaintiff, puts in his place Peter Clark, his attorney, against Peter Hogg and Cornelius Delamater, defendants, in a plea of trespass on the case for the infringement of a patent right.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Peter Hogg and Cornelius Delamater, defendants, put in their place Frederick A. Handford, their attorney, at the suit of John B. Emerson, plaintiff in the plea aforesaid.

Be it remembered, that heretofore, to wit, on the first Monday of April, of April term, in the year of our Lord one thousand eight hundred and forty-four, before the judges of the circuit court of the United States, for the southern district of New York, at the City Hall, in the city of New York, within and for the southern district of New York, came John B. Emerson, by Peter Clark, his attorney, and brought into the said court, before the aforesaid judges thereof, his certain bill against Peter Hogg and Cornelius Delamater, defendants, being in custody, &c., which said bill follows in these words, that is to say:

Circuit court of the United States, for the second circuit, southern district of New York, of April term, in the year of our Lord one thousand eight hundred and forty-four.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John B. Emerson, a citizen of the State of New York, plaintiff in this suit, by Peter Clark, his attorney, complains of Peter Hogg and Cornelius Delamater, citizens of the same State, defendants, in custody, &c., of a plea of trespass on the case.

For that whereas the said plaintiff was the original inventor of a cer-

tain new and useful improvement in the letters patent hereinafter mentioned, and fully described, the same being a certain improvement in the steam engine, and in the mode of propelling therewith either vessels on the water or carriages on the land, which was not known or used before his said invention, and which was not, at the time of his application for a patent, as hereinafter mentioned, in public use with his consent or allowance. And the said plaintiff, being so as aforesaid the inventor thereof, and being also a citizen of the United States, on the eighth day of March, one thousand eight hundred and thirty-four, upon due application thereof, did obtain certain letters patent therefor, in due form of law, under the seal of the United States, signed by Andrew Jackson, then President, and countersigned by Louis McLane, then Secretary of State, bearing date the day and year aforesaid, whereby there was secured to him, the said plaintiff, his heirs, executors, administrators, or assigns, for the term of fourteen years, from and after the date of the said patent, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, as by the said letters patent in court to be produced, will fully appear.

And the said plaintiff further says, that the said defendants, well knowing the said several premises, but contriving, and wrongfully, and injuriously intending to injure the plaintiff, and deprive him of the profits, benefits, and advantages, which he might and otherwise would have derived and acquired from the making, using, and vending of the said invention or improvement, after the making and issuing of the said letters patent, and within the term of fourteen years in said letters patent mentioned, to wit, on the first day of January, eighteen hundred and forty, and on divers other days and times between that day and the commencement of this suit, at the city of New York, and within the southern district of New York, wrongfully and unjustly, without the leave or license, and against the will of the plaintiff, made and sold divers, to wit, ten machines for propelling boats, in imitation of the said invention or improvement, or a part of the said invention or improvement, to the benefit, use, and enjoyment whereof the said plaintiff was and is entitled as aforesaid, in violation and infringement of the said letters patent, and of the exclusive rights and privileges to which the plaintiff was and is entitled as aforesaid, and contrary to the forms of the statute of the United States in such case made and provided.

And the said plaintiff further says that the said defendants, well knowing the said several premises, but further contriving and intending, as aforesaid, after the obtaining of the said letters patent by the said plaintiff as aforesaid, and within the said term of fourteen years, to wit, on the said first day of January, eighteen hundred and forty, and at divers other times between that day and the commencement of this suit, within the southern district of New York aforesaid, wrongfully and unjustly, without the leave or license, and against the will of the plaintiff, did make and sell, to wit, ten improved machines for propelling boats or vessels upon the water, constructed in a similar form, and acting upon the same principle, as the said machine or improvement, to the benefit,

use, and enjoyment whereof the said plaintiff was, and is, entitled by his said letters patent as aforesaid, in violation and infringement of the exclusive right so secured to the said plaintiff by the said letters patent as aforesaid, and contrary to the form of the statute in such case made and provided.

And the said plaintiff further says that the said defendants, well knowing the said several promises, but further contriving and intending, as aforesaid, after the obtaining of the said letters patent by the said plaintiff as aforesaid, and within the said term of fourteen years, to wit, on the said first day of January, eighteen hundred and forty, and at divers other times between that day and the commencement of this suit, in the southern district of New York aforesaid, wrongfully and unjustly, and without the consent or allowance, and against the will of the plaintiff, did imitate in part, and make a certain addition to, the said invention or improvement, to the benefit, use, and enjoyment whereof the plaintiff was, and is, entitled as aforesaid, in breach of the said letters patent, and in violation and infringement of the exclusive right and privileges so secured to the said plaintiff as aforesaid, and contrary to the form of the statute in such case made and provided.

By means of the committing of which said several grievances by the said defendants as aforesaid, the said plaintiff is greatly injured, and has lost and been deprived of divers great gains and profits, which he might, and otherwise would, have derived from the said invention or improvement in the said letters patent described and set forth, and in respect whereof he was, and is, entitled to such privileges as aforesaid, and was, and is, otherwise damnified, to the damages of the said plaintiff of ten thousand dollars; and therefore, &c.

PETER CLARK,
Att'y for pl'ff.

And now, at this day, that is to say, on the last Monday of November, in this same term, to which day the said defendants had leave to to the said bill of the said plaintiff, and then to answer the same, before the aforesaid judges thereof, at the City Hall, in the city of New York, within and for the said southern district of New York, came as well the said plaintiff, by his attorney aforesaid, as the said defendants, by Frederick A. Hanford, their attorney.

And the said Peter Hogg and Cornelius Delamater, defendants in this suit, by Frederick A. Hanford, their attorney, come and defend the wrong and injury, when, &c., and say that they, the said defendants, are not guilty of the said several supposed grievances above laid to their charge, in manner and form as the said John B. Emerson, plaintiff in this suit, hath above thereof complained against them, and of this they, the said defendants, put themselves upon the country; and the said plaintiff likewise, &c.

F. A. HANFORD,
Attorney for defendants.

SIR: Please to take notice, that the above is a copy of the plea filed in the above cause, and that thirty days or more before the trial thereof

the defendants will give notice, in writing, of the act of Congress, and of special matter to be given [in] evidence upon the trial of said cause, pursuant to the statute in such case made and provided.

Yours, &c.,

F. A. HANFORD, *Defendants' atty.*

To PETER CLARK, ESQ., *Plaintiff's atty.*

Dated July 10th, 1844.

Circuit court of the United States of America, for the southern district of New York, in the second circuit:

PETER HOGG and Cornelius Delamater ads.
JOHN B. EMERSON.

SIR: You will please to take notice that, on the trial of the above entitled cause, without waiving the right to require the plaintiff to make out all facts essential to support and prove his declaration and cause, and without admitting any part thereof, the defendants will, under the plea of the general issue aforesaid, give in evidence, prove, and insist upon the following special matter, of which notice is hereby given, pursuant to the statute, in addition to such other defence as they are by law entitled to make:

I. That the patent granted to John B. Emerson, bearing date the eighth day of March, one thousand eight hundred and thirty-four, under which the said plaintiff claims, is void for the following, among other reasons:

1st. Because, although it is, in and by the schedule annexed to the said patent, recited that the said John B. Emerson had alleged that he had invented a new and useful improvement in the steam engine, and in the mode of propelling, therewith, either vessels on the water, or carriages on the land; and it is claimed that, in and by the said patent, the exclusive right and liberty of making, using, and vending to others to be used, the said improvement was granted to the said John B. Emerson, his heirs, executors, administrators, or assigns, for the term of fourteen years from and after the date of the said patent; yet the said patentee did not (according to law) deliver, with his application for the said patent, or at any other time, to any of the officers who were to consider his application, a written description of his said improvement or invention, and of the manner of using the same, in such full, clear, and exact terms, as to distinguish the same from all other things before known, and to enable any person skilled in mechanics to make and use the said invention; and that the improvements claimed by the said John B. Emerson are not in the said patent, or in the schedule thereto annexed, described in such full, clear, and exact terms, as to distinguish the same from all other things before known, or to enable any person skilled in mechanics to make or use the said improvements; and that the said John B. Emerson did not deliver, with his said application for the said patent, or at any other time, to any of the officers who were to

consider his application, a full explanation of his said improvements, and the several modes in which he had contemplated the application of the principle by which they could be distinguished from other inventions, and he did not accompany his application with drawings and written reference, as required by law.

2. Because the said patent is granted for an improvement in the steam engine; and in the schedule annexed to the said patent the said John B. Emerson has claimed as his invention different and distinct improvements, to wit, in the steam engine and in the paddle wheel, either of which may be used singly and separately for the purpose indicated in said schedule. And although the said John B. Emerson, in the schedule annexed to the said patent, does not claim the invention of spiral paddle-wheels, but claims merely the invention of an improvement in spiral paddle-wheels already essayed, yet he has not, in the said schedule annexed to the said patent, described in what his said improvement in the said spiral paddle-wheels consists; so that any person skilled in mechanics can know wherein the paddle-wheels mentioned in the said schedule differ from spiral paddle-wheels before known and used; and because no distinction or discrimination is made between the parts and portions of the said propelling wheel of which the said John B. Emerson may be the inventor or discoverer; the said defendants protesting at the same time that the said John B. Emerson has not been the inventor or discoverer of any part or portion of the alleged improvements.

3. Because the thing patented as set forth in the said patent is different from the things claimed as the invention of the patentee in the schedule annexed to the patent. The thing patented is a new and useful improvement in the steam-engine; but in the schedules annexed to the said patent, the thing claimed by the said patentee as his inventions are not only the alleged improvement in the steam-engine, but also the spiral propelling wheel, and the application of the revolving vertical shaft to the turning of a capstan on the deck of a vessel, while the specification indicates only an improvement in the spiral paddle-wheel, with describing the same in such full, clear, and exact terms, as to distinguish the same from all other things before known, or to enable any person skilled in mechanics to make or use the said improvement.

4. Because the drawings of his alleged invention, as deposited in the Patent office, do not agree with each other, nor with the specification to his letters patent annexed, and render it altogether doubtful and uncertain what his alleged invention truly and really was.

II. And the said defendants will further give in evidence, and prove on the trial of the issue aforesaid, that the machine for propelling boats alleged to have been made by them, in violation of the right of the plaintiff in this case, were made, if made at all, under certain letters patent, heretofore granted by the United States to one John Ericsson, to wit, on the first day of February, in the year one thousand eight hundred and thirty-eight.

III. And the said defendants will further give in evidence, and

prove on the trial of the issue aforesaid, that there was at no time on file, or deposited in the Patent office, whilst they were engaged in making machines under the said John Ericsson's patent, any specifications or drawings deposited by the said John B. Emerson, from which any person skilled in mechanics could construct a machine similar to the machines they have constructed under the patent of the said John Ericsson.

IV. And the said defendants will further give in evidence, and prove on the trial of the issue aforesaid, that the specification to the letters patent of the said John B. Emerson annexed, contained no description of the inventions and improvements now alleged and pretended to be covered by his said letters patent, and claimed to be included therein.

V. And the said defendants will further give in evidence, and prove on the trial of the issue aforesaid, that the said John B. Emerson was not the original inventor or discoverer of any part or parts of the propelling wheel described in his said letters patent, or of any improvement in any part or parts of the said machine.

VI. And the said defendants will further give in evidence, on the trial of the issue aforesaid, a printed description of a certain propelling wheel, invented by Archibald Robinson, of London, which said description was published in one or more public works, and particularly in the seventh volume of the London Journal of Arts and Sciences, edited by W. Newton, and published in London in the year one thousand eight hundred and thirty-one, and extensively known to mechanics and engineers in the United States; tending to prove that the plaintiff was not the original and first inventor or discoverer of the thing patented, or of a substantial and material part thereof claimed as new, but that it had been described as aforesaid, in public work, before the supposed discovery thereof by the plaintiff.

VII. And the said defendants will further give in evidence, on the trial of the issue aforesaid, the printed description of certain improvements in machinery for propelling steam vessels, invented by Jacob Perkins, of London, as early as the year one thousand eight hundred and twenty-nine, which said description was published in a public work, printed in London, in the year one thousand eight hundred and thirty-one, to wit, in the seventh volume of the London Journal of Arts and Sciences, edited by W. Newton, a well known scientific journal, published in London in the year aforesaid. And the said defendants will further give in evidence a plate, number nine in the said volume, containing an engraved delineation of the said invention; all tending to prove that the plaintiff was not the original and true inventor or discoverer of the thing patented, or of a substantial and material part thereof claimed as new, but that it had been described as aforesaid in a public work, before the supposed discovery thereof by the plaintiff.

VIII. And the said defendants will further give in evidence, on the trial of the issue aforesaid, a printed description of a certain mode of

propelling boats in the water by the application of sculling weels, or screw propelling wheels, invented by Benjamin M. Smith, which said description was published in the year one thousand eight hundred and thirty, in the sixth volume of the new series of the Franklin Institute, a scientific journal published in the city of Philadelphia, in the State of Pennsylvania, tending to prove that the plaintiff was not the original and true inventor or discoverer of the thing patented, or of a substantial and material part thereof claimed as new, but that it had been described as aforesaid in a public work before the supposed discovery thereof by the plaintiff.

IX. And the said defendants will further give in evidence, and prove on the trial of the issue aforesaid, that the said machine, alleged in the plaintiff's writ in this cause to have been made by the said defendants, does not in any of its parts resemble the machine described in the schedule annexed to the letters patent granted to the said plaintiff.

X. And the said defendants will further give in evidence, and prove on the trial of the issue aforesaid, that the said John B. Emerson, if he was really the inventor of the improvements now alleged, pretended, and claimed by him, voluntarily abandoned the same to the public.

XI. And the said defendants will further give in evidence, and prove on the trial of the issue aforesaid, that they have never made, used, or sold the machine patented by the said John B. Emerson, or any part thereof, nor any imitation of the said machine, nor of any part thereof.

XII. And the said defendants will further give in evidence, and prove on the trial of the issue aforesaid, that the description and specification filed by the said plaintiff does not contain the whole truth relative to this invention or discovery.

Dated New York, October 26th, 1844.

Yours, &c.,

P. A. HANFORD,
Attorney for Defendants.

To PETER CLARK, esq.,
Attorney for Plaintiff.

Circuit court of the United States of America, for the southern district of New York, in the second circuit.

PETER HOGG & CORNELIUS DELAMATER ads. JOHN B. EMERSON.

SIR: You will please to take notice that, on the trial of the above entitled cause, the defendants, in addition to the various matters set forth in the notice heretofore given in this cause under date of the 26th of October, 1844, will, under the plea of the general issue, prove and insist upon the following special matter, of which notice is hereby given pursuant to statute.

The said defendants will give in evidence, on the trial of the issue aforesaid, the letters patent granted to John Ericsson by the English Government in 1836, and the letters patent granted him by the Government of the United States in the years 1838 and 1840.

The said defendants will also give in evidence copies of letters patent granted by the U. S. Government to Josiah Copley, for a spiral propeller, under date of May 22, 1830; and to John L. Sullivan, under date of March 24, 1817, for a submarine propeller; and to Edward P. Fitzpatrick, under date of November 23d, 1835, for a screw for propelling boats; and to James Widdifield, under date of October 11, 1815, for propelling boats by screw wheel; and to John L. Smith, under date of September 18, 1835, for propelling boats by screw wheel; and to Henry W. Wheatley, under date of December 30, 1818, for propelling boats by screw power; and to Jesse Ong, on the 22d May, 1837, for propelling paddle wheels.

The said defendants will also give in evidence the digest of patents issued by the United States, published under the superintendence of the commissioner of patents in 1840, and more particularly pages 219, 220, 221, 222, 223, 224, 225, of the same.

The said defendants will also give in evidence a description of certain improvements in propelling vessels, communicated by Charles Cummerow, of London, and published in Newton's London Journal, 2d series, eighth volume, page 144; which volume the said defendants will give in evidence.

The said defendants will also give in evidence a description of certain improvements in the construction and adaptation of a revolving spiral paddle, for propelling boats and other vessels, patented by the British Government to Bennett Woodcroft of Manchester, in the county palatine of Lancaster, printed and published in Newton's Journal, third series, 1st volume, page 349; which volume the said defendants will give in evidence.

The said defendants will also give in evidence the seventh volume of the Repertory of Patent Inventions, for 1837, published in London, and the copy, printed at page 172 of the same, of certain letters patent granted to F. P. Smith for an improved propeller.

The said defendants will also give in evidence certain letters patent, issued by the Government of the United States to Francis P. Smith, for an improved propeller, bearing date the twelfth day of November, 1841.

The said defendants will also give in evidence that the alleged invention of the said plaintiff, or so much thereof as the said plaintiff may allege or claim that the said defendants have infringed, was invented, known, and used, before the same was patented or invented by the said plaintiff. And the said defendants will prove the said prior use and knowledge of the said alleged improvement or invention, and where the same had been used by Dr. Thomas P. Jones, who resides in the city of Washington, in the District of Columbia.

The said defendants will also give in evidence the sixth volume of the Journal of the Franklin Institute, new series, page 149, where is contained an account of the spiral propeller above referred to, patented to Josiah Copley, and the fifth volume of the same, new series, page

136, where is contained a notice of the propeller patented to Benjamin M. Smith.

The said defendants will also give in evidence certain letters patent granted to John S. Trott, of Boston, by the Government of the United States, under date of June 2d, 1818, for propelling wheels for boats by animal power.

Dated New York, October 27th, 1845.

Yours, &c.,
F. A. HANFORD,
Attorney for Defendants.

To PETER CLARK, esq.,
Attorney for Plaintiff.

Therefore, the issue above joined is ordered to be tried at a circuit court to be holden in and for the southern district of New York, before the judges thereof, on the last Monday of November, in the year one thousand eight hundred and forty-four.

Be it remembered, that, on the 14th day of October, 1846, before the judges of the same court, comes the said plaintiff, by his attorney aforesaid, and prays that Hamilton Morton be substituted as his attorney in place and the stead of the said Peter Clark, and it is granted to him, &c.

And on the first day of April, 1847, before the judges of the same court, came the said defendants, and because their said attorney, Frederick A. Hanford, had departed this life, prayed that Edward W. Stoughton, esq., be substituted as their attorney in this suit; and it is granted to them, &c.

And hereupon the proceedings in this cause are duly continued from the last Monday of November, 1844, until the first Monday of April, 1847, before the judges aforesaid at the City Hall, in the city of New York, in the said southern district; the same day is given to the parties aforesaid at the same place.

At which day and place last aforesaid, at the City Hall, in the city of New York, and within the southern district of New York aforesaid, at a circuit court then and there holden, in and for said southern district of New York, before the judges thereof, comes as well the said plaintiff, by his attorney last aforesaid, as the said defendants, by their attorney last aforesaid, according to the form of the statute in such case made and provided; and the jurors of the jury, being duly summoned, also come, who, to speak the truth of the matters within contained being chosen, tried, and sworn, say upon their oaths that the said Peter Hogg and Cornelius Delamater, the defendants, are guilty of the premises within laid to their charge, in manner and form as the said John B. Emerson hath within complained against them, and they assess the damages of the said plaintiff, on occasion thereof, over and above his costs and charges by him about this suit in this behalf expended, to one thousand five hundred dollars, and for those costs and charges to six cents.

Therefore, it is considered that the said John B. Emerson do recover against the said Peter Hogg and Cornelius Delamater his damages, costs, and charges in form aforesaid by the jurors aforesaid assessed, and also three hundred and twenty-four dollars and fifteen cents, for his said costs and charges by the said court now here adjudged of increase to the said John B. Emerson, and with his assent; which said damages, costs, and charges, in the whole, amount to one thousand eight hundred and twenty-four dollars and fifteen cents.

And the said Peter Hogg and Cornelius Delamater, defendants, in mercy, &c.

Judgment signed this 10th day of May, 1847.

DAVID L. GARDINER, *Dep. Clerk*.

Filed January 21, 1848.